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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,043	06/24/2003	Jason P. McDevitt	KCX-375-CON (16068.1)	1869
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DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER COLE, LAURA C	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/603,043	<b>Applicant(s)</b> MCDEVITT ET AL.	
	<b>Examiner</b> Laura C Cole	<b>Art Unit</b> 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 46-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 46-56 is/are allowed.
- 6) ☒ Claim(s) 57-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08062004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 57-59 and 61-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr, USPN 5,765,252 in view of McCarver et al., USPN 5,362,306.

Carr discloses the claimed invention including a first hollow member (60 or 82) having an open end (see Figures), the hollow member further defining a texturized surface (64 or 88), a second hollow member (68 or 84) having an open end (see Figures), the second hollow member comprising a base web (Column 6 Lines 10-13), and a connecting portion (70 or portion between fingers 82 and 84) for connecting the first hollow member to the second hollow member. The second hollow member defines a texturized surface (88). The first hollow member and second hollow member include a closed end located opposite each open end (see Figure 8). Also, an additive has been applied comprising of fluorides or teeth cleansers (Column 2 Lines 33-35). Carr does not disclose that the base web or that the hollow members comprise an elastic nonwoven comprising an elastic component and a non-elastic component.

McCarver et al. discloses a form fitting surgical device for covering an extremity that forms a hollow member (see Figures; Column 3 Lines 12-27) and is made from an elastic nonwoven comprising an elastic component (36) and a non-elastic component

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(32 or 34). The hollow member includes a first panel (layer 36) attached to a second panel (layer 34), while the second panel comprises a non-elastic material (Column 4 Lines 62-64, as it is made from a "film"). The device is a laminate that is bonded, specifically stretch-bonded (Column 2 Lines 32-41). However, that the laminate is stretch-bonded or neck-bonded implies that the claim is a product-by-process claim and "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

It would have been obvious for one of ordinary skill in the art to modify Carr so that both the first and second hollow members of Carr are comprised of an elastic nonwoven comprising an elastic component and a non-elastic component, as McCarver et al. teach, so that the device is form fitting.

2. Claims 57-59 and 61-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ness, USPN 2,041,262 in view of McCarver et al., USPN 5,362,306.

Ness discloses the claimed invention including a first hollow member (8a) having an open end (see Figure 1), the hollow member further defining a texturized surface (9), a second hollow member (8b) having an open end (see Figure 1), the second hollow member comprising a base web (Column 1 Lines 47-51), and a connecting portion (8c) for connecting the first hollow member to the second hollow member. The base web of

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the first hollow member and the base web of the second hollow member both comprise an elastic nonwoven material such as rubber (Column 1 Lines 47-51). The second hollow member defines a texturized surface (9). The first hollow member and second hollow member include a closed end located opposite each open end (see Figures). Ness does not disclose that the base web or that the hollow members comprise an elastic nonwoven comprising an elastic component and a non-elastic component.

McCarver et al. discloses a form fitting surgical device for covering an extremity that forms a hollow member (see Figures; Column 3 Lines 12-27) and is made from an elastic nonwoven comprising an elastic component (36) and a non-elastic component (32 or 34). The hollow member includes a first panel (layer 36) attached to a second panel (layer 34), while the second panel comprises a non-elastic material (Column 4 Lines 62-64, as it is made from a "film"). The device is a laminate that is bonded, specifically stretch-bonded (Column 2 Lines 32-41). However, that the laminate is stretch-bonded or neck-bonded implies that the claim is a product-by-process claim and "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

It would have been obvious for one of ordinary skill in the art to modify Ness so that both the first and second hollow members of Ness are comprised of an elastic

nonwoven comprising an elastic component and a non-elastic component, as McCarver et al. teach, so that the device is form fitting to a finger.

3. Claims 57-59 and 61-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rescigno, USPN 4,884,581 in view of McCarver et al., USPN 5,362,306.

Rescigno discloses the claimed invention including a first hollow member (22) having an open end (see Figure 6), the hollow member further defining a texturized surface (16, 20; Column 3 Lines 62-66), a second hollow member (24) having an open end (see Figure 6), the second hollow member comprising a base web (Column 6 Line 67 to Column 4 Line 1), and a connecting portion (18) for connecting the first hollow member to the second hollow member. The second hollow member defines a texturized surface (16, 21). The first hollow member and second hollow member include a closed end located opposite each open end (see Figures 6-10). Rescigno does not disclose that the base web or that the hollow members comprise an elastic nonwoven comprising an elastic component and a non-elastic component.

McCarver et al. discloses a form fitting surgical device for covering an extremity that forms a hollow member (see Figures; Column 3 Lines 12-27) and is made from an elastic nonwoven comprising an elastic component (36) and a non-elastic component (32 or 34). The hollow member includes a first panel (layer 36) attached to a second panel (layer 34), while the second panel comprises a non-elastic material (Column 4 Lines 62-64, as it is made from a "film"). The device is a laminate that is bonded, specifically stretch-bonded (Column 2 Lines 32-41). However, that the laminate is

stretch-bonded or neck-bonded implies that the claim is a product-by-process claim and "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

It would have been obvious for one of ordinary skill in the art to modify Rescigno so that both the first and second hollow members of Rescigno are comprised of an elastic nonwoven comprising an elastic component and a non-elastic component, as McCarver et al. teach, so that the device is form fitting to a finger.

4. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ness, USPN 2,041,262 in view of McCarver et al., USPN 5,362,306, and in further view of Porcelli, USPN 5,678,273.

Ness and McCarver et al. disclose all elements above, however does not include the textured surface comprising of looped bristles.

Porcelli teaches an oral hygiene applicator that comprises looped bristles so that they are capable of acting omnidirectionally in cleaning teeth and massaging gums regardless of the movement of the applicator and because the loops act as scoops to capture food particles (Column 2 Lines 27-41).

It would have been obvious for one of ordinary skill in the art to substitute the cleaning elements of Ness and McCarver et al. for the looped bristle texture that Porcelli teaches so that a more effective brushing and cleaning of teeth and gums may occur.

5. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rescigno, USPN 4,884,581 in view of McCarver et al., USPN 5,362,306, and in further view of Meunier, USPN 2,599,191.

Rescigno and McCarver et al. disclose all elements above, however does not include the textured surface comprising of looped bristles.

Meunier discloses a dental brush having looped bristles (9) as a cleaning surface that is beneficial for those having sensitive mouth tissues (Column 1 Lines 4-23.)

It would have been obvious for one of ordinary skill in the art to substitute the cleaning elements of Rescigno and McCarver et al. for the looped bristle texture that Meunier teaches in order to accommodate more sensitive gums.

6. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carr, USPN 5,765,252 in view of McCarver et al., USPN 5,362,306, and in further view of Porcelli, USPN 5,678,273.

Carr and McCarver et al. disclose all elements above, however does not include the textured surface comprising of looped bristles.

Porcelli teaches an oral hygiene applicator that comprises looped bristles so that they are capable of acting omnidirectionally in cleaning teeth and massaging gums regardless of the movement of the applicator and because the loops act as scoops to capture food particles (Column 2 Lines 27-41).



It would have been obvious for one of ordinary skill in the art to substitute the cleaning elements of Carr and McCarver et al. for the looped bristle texture that Porcelli teaches so that a more effective brushing and cleaning of teeth and gums may occur.

7. Claims 69-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rescigno, USPN 4,884,581 in view of McCarver et al., USPN 5,362,306, and in further view of Bori, USPN 4,617,694.

Rescigno and McCarver et al. disclose all elements above, however do not include a connecting portion that comprises dental floss.

Bori teaches a finger device for cleaning teeth that includes two hollow members (10 and 33) that are connected by dental floss (30). There are two hollow members so that the floss will remain taut when in use (Column 4 Lines 41-43).

It would have been obvious for one of ordinary skill in the art to substitute the connecting portion of Rescigno and McCarver et al. for dental floss, as Bori teaches, so that after cleaning the teeth the user may immediately use floss that is held taut between the two hollow portions.

8. Claims 69-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ness, USPN 2,041,262 in view of McCarver et al., USPN 5,362,306, and in further view of Bori, USPN 4,617,694.

Ness and McCarver et al. disclose all elements above, however do not include a connecting portion that comprises dental floss.

Bori teaches a finger device for cleaning teeth that includes two hollow members (10 and 33) that are connected by dental floss (30). There are two hollow members so that the floss will remain taut when in use (Column 4 Lines 41-43).

It would have been obvious for one of ordinary skill in the art to substitute the connecting portion of Ness and McCarver et al. for dental floss, as Bori teaches, so that after cleaning the teeth the user may immediately use floss that is held taut between the two hollow portions.

#### ***Allowable Subject Matter***

9. Claims 46-56 are allowed.

10. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art made of record teaches or suggests a plurality of spaced apart microcuts.

#### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*LCC*  
LCC

14 September 2004



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